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OGC HAS REVIEWED.

Chief, Confidential Funds Branch

22 April 1949

Office of the General Counsel

Public Law 600 § 8

*filed in
221 A*

1. Reference is made to your memorandum of 15 March 1949, requesting interpretation and clarification of Section 8 of the Act of August 2, 1946, 60 Stat. 808 (Public Law 600) in the light of certain Confidential Funds Branch practices relating to the sale or exchange of various non-expendable items of equipment.

2. You state (a) that it has been the practice of Confidential Funds Branch, specifically with respect to automobiles, to accumulate the proceeds from the sale of autos and charge the entire costs of purchase to the fund to the extent that gross proceeds of all sales exceed the cost of all purchases; (b) that because of administrative difficulty and expenses in interzone transfers, specific sales and specific purchases have not been tied in; (c) that it is felt that one new car may replace in cost and efficiency more than one old car and that it cannot be presently determined that more than one old car was disposed of for the purpose of acquiring one new car; and (d) that at the end of the fiscal year, any net balance remaining in the fund indicating an excess of proceeds from sales over cost of purchases will be covered into the United States Treasury as a miscellaneous receipt.

3. Section 8 of Public Law 600 provides as follows:

"In purchasing motor-propelled or animal-drawn vehicles or tractors, or road, agricultural, manufacturing, or laboratory equipment, or boats, or parts, accessories, tires, or equipment thereof, or any other article or item the exchange of which is authorized by law, the head of any department or his duly authorized representative may exchange or sell similar items and apply the exchange allowances or proceeds of sales in such cases in whole or in part payment therefor: PROVIDED, That any transaction carried out under the authority of this section shall be evidenced in writing."

4. In 27 Comp. Gen. 30 it was held, quoting from the syllabus:

"Under section 8 of the administrative expense statute of August 2, 1946, authorizing application of the proceeds of sale or the exchange allowance of used vehicles, etc., toward the purchase of new similar equipment, two or more old units of equipment may be traded in or sold and the proceeds thereof applied toward the purchase of a unit of new equipment if, in fact, the one is to be used as a replacement for the old; however, if the old equipment is surplus, the exchange or sale thereof in connection with the purchase of new is not authorized--it being for disposition under the applicable provisions of the Surplus Property Act of 1944."

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5. On the basis of this result, therefore, the practice referred to in 2.a. above should be adjusted to conform with the conclusions reached in the foregoing decision. Where a strong factual presentation has been made that two units may be exchanged for one there would appear to be no legal objection to the trade-in or sale of two or more units of old equipment and the purchase of a single unit of new equipment if the unit of new equipment, in fact, is to be used as a replacement for the two or more units of old equipment. However, as a general practice, it would definitely be opposed to the intentment of the statute and the interpretations placed thereon by the General Accounting Office in its decisions construing the section involved. In this connection, 28 Comp. Gen. 256 is pertinent. Here it was held, quoting from the syllabus:

"Where, in the exchange of equipment under the provisions of section 8 of the administrative expense statute of August 2, 1946, five used cameras are exchanged for a new camera, which camera actually is in replacement of but one of the five old cameras, the difference between the value of the replaced camera and the purchase price of the new one is for charging against the applicable appropriation and for crediting to miscellaneous receipts in accordance with the provisions of the Surplus Property Act of 1944."

6. In this regard some of the language of this decision is interesting and is quoted directly below.

"Ordinarily a new item of equipment is purchased to replace but one item of old equipment. It is only in extraordinary circumstances, when the item of new equipment is so far advanced technically and performs the work so many times more efficiently than the old equipment, that it properly may be said that the new equipment is to take the place of more than one item of old equipment. Accordingly, on the basis of the present record it is to be presumed that the new Recordak camera actually is in replacement of but one of the five old Recordak cameras."

7. The practices referred to in paragraph 2.b. above do not appear to present any real difficulty. In decision B-73347, dated 2 February 1949, the Public Roads Administration requested approval of a procedure, "where old equipment of the Public Roads Administration, used seasonally, is disposed of prior to the issuance of purchase orders for replacements, that the proceeds of sale be credited to the Receipt Account, #806690 Deposits, Proceeds of Sale, motor propelled vehicles, etc., 1949 Federal Works Agency, Public Roads Administration"; that the Schedules of Collections in such instances indicate that the monies cover proceeds of sale of equipment at the end of the construction season and that administrative determination has been made to purchase similar equipment in the fiscal year and that subsequent accounting documents provide proper cross identification." The Comptroller General ruled that the proceeds of sale of

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the old equipment may be used only where the equipment purchased is similar to and in replacement of the old equipment. It was pointed out there was no statutory requirement that (1) the sale or exchange of the old equipment be simultaneous with the purchase of the replaced equipment or (2) the sale of each must precede in point of time or be subsequent to the purchase (26 Comp. Gen. 729). The Comptroller General stressed, however, that the equipment purchased must be a replacement for the old equipment and be a similar item (26 Comp. Gen. 931) and that unless a finding to that effect is made, the proceeds of sale of the old equipment may not be applied against the purchase price of the replacement. The Comptroller concluded that there was no legal objection to the proposed action by the Public Road Administration if it was shown on the Schedule of Collections that the monies cover the sale of equipment and that an administrative determination had been made to purchase new similar equipment later in the fiscal year. However, this decision is not authority for the general placement for the proceeds of sale of equipment into a limitation account (Sale of Equipment) and the withdrawal therefrom so long as subsequent purchase documents provide similar information, thereby enabling a tie-in between the sale of old equipment and the purchase of new similar equipment.

8. In this connection, in a case involving a similar device, it was held in 27 Comp. Gen. 478 that although a document as proposed above would show that funds used to make payment on account of a general class of new equipment were derived from the proceeds of sale of old equipment of the same general class, the supporting papers would not show that the funds used to make payment on account of a particular vehicle or unit were derived from the sale of an old vehicle or unit which it would replace. The Comptroller General concluded that since the proposed action would not permit the identification of particular purchases with related sales, the accounting for transactions thereunder would not comply with provisions of Section 8 of Public Law 600. He observed that identification would be limited to a reference of a class of sales to a similar class of purchases.

9. The practice referred to in paragraph 2.c. above presents some difficulty and should be amended in the light of statements previously made. In this regard, it can only be emphasized that the Comptroller General has ruled that while the proceeds of sale of one old unit may be applied against the purchase of a new one in replacement thereof, it is the plain intent of the statute to permit the proceeds of the sale of particular items of old or used equipment to be applied only against the purchase price of a particular item of new equipment with which the old is to be replaced (27 Comp. Gen. 477).

10. As was pointed out in decision B-73347, supra, there is no legal objection to crediting the proceeds of sale to a separate receipt account so long as it is shown on the Schedule of Collections that the money covered the sale of equipment and that an administrative determination had been made reflecting a dedication of funds to the purchase of similar new equipment later in the fiscal year.

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11. The practice contemplated in paragraph 2.d. above should be harmonized with the statements of paragraph 5 hereof. Basically, these rulings hold against the deposit of cash received in excess of a tangible allowance into a special receipt account, said cash excess to be made available to purchase additional equipment at a later date. In this connection the conclusions of 27 Comp. Gen. 477-478 and the ultimate findings of 28 Comp. Gen. 256 should be reviewed. The later mentioned decision involved a situation providing that five Recordak cameras were to be used as an exchange allowance on one Recordak camera. The bid received from the contractor specified \$2,400. as the amount of such exchange allowance and apparently fixed \$1,550. as the price of the new camera, thus resulting in an excess exchange allowance of \$850., which amount was received by the Bureau of Census and deposited temporarily in Special Deposits. The agency then inquired whether, if such payment of cash was permissible, the amount of such payment might be deposited into the Special Fund Receipt Account 6690, Proceeds of Sales, Motor Propelled Vehicles, etc., and be made available to purchase additional micro-film equipment from Recordak Corporation, namely micro-film readers, without which a micro-film camera was of no value. The Comptroller General held that not only would it be required that the excess receipt from the proceeds of the sale be deposited and covered into the Treasury of the United States as a miscellaneous receipt but there also would be required to be deposited the difference between the value of the replaced unit and the balance allowed by the contractor toward the purchase price of the new unit.

12. You have also requested that this office furnish you with a clarification of the extent to which Section 8 of Public Law 600 applies to non-expendable equipment. It is apparent that Section 8 not only applies to those items which are specifically mentioned but to those which may logically be related. It should be noted that Section 8 also applies to any other article or item, the exchange of which is authorized by law. Usually this authority would be found in specific Agency appropriation act or in some act of general application to the various Government departments and agencies. In the event that you are confronted with a doubtful case the matter should be referred to this office.

LAWRENCE R. HOUSTON
General Counsel

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